IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NOS. 366 TO 369 OF 2005

Kamal Kishor B. Maniyar & Anr ...Petitioners

Versus

Arpan Leasing Co. Ltd. & Anr ...Respondents

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Mr. Shirish Gupte Sr.counsel with Ms. Karishma Barucha, for the Petitioners

Mr. A.P. Mundargi, Sr. counsel with Mr. P.P. Runwal for Respondent No.1.

Ms. S.V. Gajare, APP for State in WP 366/05
Ms. R.M. Gadhavi, APP for State in WP 367 & 369/05
Smt. G.P. Mulekar, APP for State in WP No.368/05

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CORAM: A. M. KHANWILKAR, J.

DATED: 12TH DECEMBER, 2005

P.C.:-

1. Heard the counsel for the parties.

2. The complainant had filed an application before the trial Court under Section 317(2) of Cr.P.C. The application, however, records that it was for separating charge. The trial Court after considering the rival stand, allowed the application as filed for separating the charge. Relying on the said order,

the petitioner accused have filed present proceedings to declare that Criminal action under Section 138 r.w. 141 of Negotiable Instruments Act qua them will not survive as the charge has been separated in so far as the main accused Company is concerned. This application has been rejected by the impugned order dated 20.10.2004 passed by the learned Metropolitan Magistrate, 33rd Court at Ballard Pier, Mumbai.

3. According to Mr. Gupte, the trial Court by order dated 12.09.2003 having separated the charge in so far as the main accused Company is concerned, the petitioners who were only the directors of the company, cannot be proceeded with for the pending criminal action against them, in absence of main accused Company. This submission does not commend to me. Whereas I find substance in the stand taken on behalf of the Respondent that the application as was filed by them on 12.9.2003 was essentially under the provisions of Section 317(2) of Cr.P.C., though the expression "separation of charge as against the accused No.1 Company" has been used. That application was moved in view of the fact that the accused Company was ordered to be wound up by the Company Judge. Be that as it may, as mentioned

earlier, I am in agreement with the submission made on behalf of the respondent-complainant that the order passed on 12.9.2003 by the trial Court on the application filed by the Respondent-complainant was essentially under Section 317(2) of the Code of Criminal Procedure, for separating the trial. Viewed in this perspective, no fault can be found with the conclusion arrived at by the lower Court in rejecting the application taken out by the Petitioner. Hence, petitions are rejected and disposed of accordingly.

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